IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.3760 OF 2007

Umesh Ramchandra Aravat ...Petitioner

Versus

Ratnagiri Zilla Madhyavarti Bank & Ors. ...Respondents

.....

Mr.Sanskar Marathe for Petitioner.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 6, 2007.

P.C.

1. Heard Counsel for the Petitioner.

2. The order which is impugned in this Petition, in my view, needs no interference being discretionary order passed by the Appellate Court requiring the Petitioner to pay sum of Rs.50,000/- (Rupees Fifty Thousand) as against the money decree against the Petitioner passed by the Trial Court in

the sum of Rs.4,26,604/- (Rupees Four Lakhs Twenty-six Thousand Six Hundred Four).

3. To get over this position, Counsel for the Petitioner has relied on the decision of our High Court in the case of **Dilawar Hakim Shah v. Special Recovery Officer reported in 2006(3) All.M.R. 68.** In the first place, this decision is in the context of provisions of Section 154 (2A) of the Maharashtra Cooperative Societies Act. Besides, it takes the view that the Registrar is not disabled to consider application of condonation of delay which precedes the entertainment of Revision Application, unless the Applicant before it was made to deposit 50% of the statutory amount payable by the Applicant for maintaining a Revision Application. This Judgment will have no application to the case on hand as in the present case, the Petitioner has preferred Appeal before the Appellate Court against the money decree passed by the Trial Court. I see no reason why the Appellate Court cannot pass direction against the Petitioner to deposit portion of the money decree

amount before entertaining the delay application to test the bonafides of the Petitioner. In this case, the money decree is in the sum of Rs.4,26,604/- (Rupees Four Lakhs Twenty-six Thousand Six Hundred Four) with interest at the rate of 16% per annum, whereas, the Appellate Court has asked the Petitioner to deposit only a sum of Rs.50,000/- (Rupees Fifty Thousand). That amount being just and reasonable, no fault can be found with such direction given by the Appellate Court.

4. Counsel for the Petitioner would then rely on the decision of the Apex Court in the case of **MGMT of M/s.Devi Theatre v. Vishwanath Raju reported in AIR 2004 SC 3325** to contend that imposing such condition of deposit for admission of Appeal is not justified. Counsel for the Petitioner fairly accepts that the said view is in relation to appeal arising out of Suit which was not specifically for recovery of amount or of a money decree. The exposition in the said decision is, therefore, in the fact situation of that case.

5. Suffice it to observe that the order

impugned in this Petition is a discretionary order passed by the Appellate Court and the direction issued is just and proper direction to ascertain the bonafides of the Petitioner. Hence, dismissed.

A.M.KHANWILKAR, J.